INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	5
Conclusion	9

CITATIONS

Cases:

Farm Security Administration v. *Herren*, 165 F. 2d 554, certiorari denied, 333 U. S. 875	7
Federal Housing Administration v. *Burr*, 309 U. S. 242	8
Franklin v. *United States*, 308 U. S. 516	7
Keifer & Keifer v. *Reconstruction Finance Corporation*, 306 U. S. 381	6, 7
Klepinger v. *Rhodes*, 140 F. 2d 697, certiorari denied, 322 U. S. 734	8
Matlaw Corporation v. *War Damage Corporation*, 164 F. 2d 281, certiorari denied, 333 U. S. 863	8
Merchant Fleet Corporation v. *Harwood*, 281 U. S. 519	6
Minnesota v. *United States*, 305 U. S. 382	7
Olson v. *United States Spruce Products Corporation*, 267 U. S. 462	6
Otis Elevator Company v. *United States*, 18 F. Supp. 87	7
Reconstruction Finance Corporation v. *Menihan Corp.*, 312 U. S. 81	7
Ridgley v. *United States*, 45 A. 2d 475	9
Rowe v. *Nolan Finance Company*, 142 F. 2d 93	8
Sloan Shipyards v. *U. S. Fleet Corporation*, 258 U. S. 549	6
United States v. *Algoma Lumber Company*, 305 U. S. 415	7
United States v. *Jones*, 131 U. S. 1	7
United States v. *Shaw*, 309 U. S. 495	6
United States v. *Sheriff Motor Co.*, 63 F. Supp. 685	9
United States v. *Sherwood*, 312 U. S. 584	7
United States v. *Turner*, 47 F. 2d 86	7
United States v. *Weisenbloom*, 168 F. 2d 698	9
Wittek v. *United States*, 54 A. 2d 747	9

Statutes:

Act of February 17, 1909, 35 Stat. 623, Ch. 134	5
Act of March 3, 1921, 41 Stat. 1310, Ch. 125, Sec. 1	5
Act of March 27, 1942, 56 Stat. 174, 175	3

Statutes—Continued

	Page
Act of June 30, 1947, 61 Stat. 202, 15 U.S.C. 603	3
Municipal Court Act of 1942, Sec. 4, 56 Stat. 190, 192, District of Columbia Code, Sec. 11-755	2, 5
Reconstruction Finance Corporation Act (Act of January 22, 1932, c. 8, 47 Stat. 5, as amended by the Act of June 19, 1934, 48 Stat. 1105, 1108 and by the Act of June 10, 1941, 55 Stat. 248, 249:	
Sec. 4	3
Sec. 5(d)	2
28 U. S. C. 1331	8
28 U.S.C. 1346 (formerly Sec. 24 (20) of the Judicial Code)	5
District of Columbia Code, Sec. 11-305	6
District of Columbia Code, Sec. 11-306	9
Miscellaneous:	
7 Fed. Reg. 2531-2532	2, 3

In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 492

RUSSELL R. KNOWLES AND SYLVIA KNOWLES, ET AL., PETITIONERS

v.

WAR DAMAGE CORPORATION, AN INSTRUMENTALITY OF THE UNITED STATES OF AMERICA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The United States District Court for the District of Columbia did not render an opinion. The opinion of the United States Court of Appeals for the District of Columbia (R. 34-39) has not yet been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on October 4, 1948 (R. 40). The petition for writ of certiorari was filed on December, 31 1948. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether the courts below erred in holding that this action, involving admittedly less than $3,000, brought against a subsidiary of the Reconstruction Finance Corporation empowered to "sue and be sued in any court of competent jurisdiction", lay within the exclusive jurisdiction of the Municipal Court for the District of Columbia.

STATUTE INVOLVED

Section 4 of the Municipal Court Act of 1942, 56 Stat. 190, 192 (Sec. 11-755 of the District of Columbia Code) provides in part:

> (a) The Municipal Court for the District of Columbia, * * * shall have exclusive jurisdiction of civil actions, including counterclaims and crossclaims, in which the claimed value of personal property or the debt or damage claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000 * * *.

STATEMENT

The respondent, War Damage Corporation,[1] was created on December 13, 1941 (7 Fed. Reg. 2531) by the Reconstruction Finance Corporation pursuant to Section 5d of the Reconstruction Finance Corporation Act. (Act of January 22, 1932, c. 8, 47 Stat. 5, as amended by the Act of June 19, 1934, 48 Stat. 1105, 1108 and by the Act of June 10, 1941, 55

[1] Originally it was called the "War Insurance Corporation". 7 Fed. Reg. 2531. By amendment to its charter its name was changed on March 30, 1942 to "War Damage Corporation" 7 Fed. Reg. 2531-2532.

Stat. 248, 249). Its purpose as expressed in its charter was to provide insurance against damage to property through enemy attack. Its charter provided that it should have power "to sue and be sued in any court of competent jurisdiction" and that it should "in all other respects be possessed of the privileges and immunities that are conferred upon the Reconstruction Finance Corporation under the Reconstruction Finance Corporation Act, as amended."[2] Its authorized capital stock was $100,000,000 all of which was subscribed for by the Reconstruction Finance Corporation and was not transferable. 7 Fed. Reg. 2531.

Respondent provided insurance without compensation until July 1, 1942 when payment of an annual premium was required. 56 Stat. 175. On July 20, 1942, on payment of a $9 premium, respondent issued a policy to petitioners covering their home and automobile (R. 27-29).[3]

This action was instituted in the United States District Court for the District of Columbia by petitioners "on their own behalf * * * and on behalf of all others similarly situated" (R. 2). The complaint alleged that "The matter in controversy arises under the Laws of the United States, is a suit against a corporation organized under an Act of

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[2] The Reconstruction Finance Corporation has power "to sue and be sued, to complain and to defend, in any court of competent jurisdiction, State or Federal." Act of January 22, 1932, Sec. 4, 47 Stat. 6; Act of June 30, 1947, 61 Stat. 202, 15 U. S. C. 603.

[3] There is no allegation that a second premium was ever paid.

Congress, and jurisdiction is also vested in this Court by paragraphs 301 and 306 of Title 11 of the Code of Laws of the District of Columbia" (R. 2-3). It further alleged that the respondent has in its possession "sums of money amounting to $300,000,000 more or less which, under the insurance program * * * are the equitable property of the plaintiffs and of all other holders of policies issued by the defendant, in the nature of refundable unearned excess premiums" (R. 6). It prayed the court to enjoin the respondent from paying into the United States Treasury any of the surplus in its possession; to require an accounting; to impress a trust upon these funds for the pro rata benefit of all policyholders; to reform the insurance policies; and to direct the payment of the surplus funds, after deduction of necessary costs and expenses, to the policyholders in proportion to their interests (R. 7-8). Petitioners' insurance contract attached to the complaint showed that their interest was not more than $18 (R. 27-31).

On motion of the respondent made on the ground, among others, of lack of the requisite jurisdictional amount, the complaint was dismissed (R. 33). On appeal, the court below affirmed the judgment of the district court (R. 40). It held that petitioners could not aggregate their claims with those similarly situated to meet the jurisdictional minimum of $3,000 required for suit in the District Court and

that, by statute, exclusive jurisdiction lay with the Municipal Court. (R. 35-38)

ARGUMENT

Since 1909, the Municipal Court for the District of Columbia has enjoyed exclusive jurisdiction of certain classes of cases (Act of February 17, 1909, 35 Stat. 623, ch. 134; Act of March 3, 1921, 41 Stat. 1310, ch. 125, sec. 1). Most recently that jurisdiction has been enlarged by Section 4 of the Municipal Court Act of 1942 (56 Stat. 192, Sec. 11-755 of the District of Columbia Code) to include all "civil actions * * * in which the claimed value of personal property or the debt or damages claimed, exclusive of interest, attorneys' fees, protest fees, and costs, does not exceed the sum of $3,000." Both courts below held, correctly we submit, that this action involving as it does at most the sum of $18 lay within the exclusive jurisdiction of the Municipal Court and therefore outside that of the District Court. Petitioners' argument to the contrary is that this is a suit against the United States; that the United States District Court for the District of Columbia like the other district courts enjoys concurrent jurisdiction with the Court of Claims under the Tucker Act of suits against the United States;[4]

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[4] 28 U. S. C. 1346 (a) (2) formerly Section 24 (20) of the Judicial Code provides that (a) "The district courts shall have original jurisdiction, concurrent with the Court of Claims, of: * * * (2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regu-

and that consequently the District Court had jurisdiction of this suit under that Act (Pet. pp. 7-9).

The fallacy in petitioners' argument lies in the assumption that all suits which affect the interests of the United States necessarily proceed under the Tucker Act. Sovereign immunity to suit may be waived by Congress, either (1) by statute, as in the Tucker Act, which authorizes direct suit against the United States, or (2) by providing for the conduct of government business by corporate agents, such as respondent, not endowed with the Government's immunity and thus amenable to suit. *United States* v. *Shaw*, 309 U. S. 495, 501; *Keifer & Keifer* v. *R. F. C.*, 306 U. S. 381. Suits against governmental corporations authorized "to sue and be sued" are not considered suits against the United States. *Olson* v. *United States Spruce Prod. Corp.*, 267 U. S. 462; *Sloan Shipyards* v. *U. S. Fleet Corporation*, 258 U. S. 549; *Merchant Fleet Corp.* v. *Harwood*, 281 U. S. 519. Even in the absence of statute, suit may be brought against such corporations in State courts, (*Sloan Shipyards* v. *U. S. Fleet Corp., supra; Olson* v. *United States, supra*) for tort (*Keifer & Keifer* v. *R. F. C., supra*, at pp.

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lation of an executive department, or upon any expressed or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." The District Court of the United States for the District of Columbia has the same powers and jurisdiction as the District Courts of the United States. See 11-305, District of Columbia Code.

394-397), and costs thereon allowed (*R. F. C.* v. *Menihan Corp.*, 312 U. S. 81).

The complaint in the instant case is addressed to the liberal rules which applies to suits against corporate agents and not to the limited consent given by the Tucker Act to suits against the United States. If this action were brought under the Tucker Act, petitioners could not secure the relief for which they pray since equitable decrees such as are sought here lie outside the jurisdiction of the courts under that Act. *United States* v. *Sherwood*, 312 U. S. 584, 588; *United States* v. *Jones*, 131 U. S. 1; *United States* v. *Turner*, 47 F. 2d 86 (C. A. 8). Nor is it clear that the complaint states a cause of action on a contract of the United States, express or implied in fact, a prerequisite for a Tucker Act suit. Cf. *U. S.* v. *Algoma Lumber Co.*, 305 U. S. 415, 419, 423; *Farm Sec. Adm.* v. *Herren*, 165 F. 2d 554, 562, 564-565 (C. A. 8), certiorari denied, 333 U. S. 875. Moreover, since the complaint on its face asks for disposition of a sum well in excess of the $10,000 maximum fixed by the Act, it probably lies outside the jurisdiction of the district court. Cf. *United States* v. *Sherwood, supra; Franklin* v. *United States*, 308 U. S. 516; *Otis Elevator Co.* v. *United States*, 18 F. Supp. 87 (S. D. N. Y.). Finally, since the Tucker Act authorizes suit only in the district courts (cf. *Minnesota* v. *United States*, 305 U. S. 382, 388), the Municipal Court would not have even

the concurrent jurisdiction which petitioners unquestioningly assume. (Pet. 5, 11.)

Petitioners' ability to proceed free from the limitations of the Tucker Act derives from the fact that respondent is specifically authorized "to sue and be sued." But while a governmental agency endowed with such authority "is not less amenable to judicial process than a private enterprise under like circumstances would be," it is not more so. *F. H. A.* v. *Burr,* 309 U. S. 242, 245, 250; *Matlaw Corp.* v. *War Damage Corp.,* 164 F. 2d 281 (C. A. 7), certiorari denied, 333 U. S. 863. Having elected to proceed against a governmental corporation as though it were a private enterprise, petitioners must accept the limitations inherent in the remedy they have elected. Since the district court clearly lacks jurisdiction in actions against private enterprises involving less than $3,000, the suit was properly dismissed. *Klepinger* v. *Rhodes,* 140 F. 2d 697 (C. A. D. C.), certiorari denied, 322 U. S. 734; *Rowe* v. *Nolan Finance Co.,* 142 F. 2d 93 (C. A. D. C.).

The provision of the Judicial Code (28 U. S. C. 1331) which prescribes the same jurisdictional minimum for the district courts, would equally compel this result. Indeed, the Court of Appeals for the Seventh Circuit has affirmed a judgment dismissing for failure to meet the $3,000 minimum an action against respondent in all respect identical

to this one. *Matlaw Corp.* v. *War Damage Corp.*, 164 F. 2d 281, certiorari denied, 333 U. S. 863.[5]

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
PAUL A. SWEENEY,
EDWARD H. HICKEY,
CECELIA H. GOETZ,
Attorneys.

JANUARY 1949.

[5] As a subsidiary ground for granting certiorari, petitioners assert a conflict between the decision below and *United States* v. *Sheriff Motor Co.*, 63 F. Supp. 685 (D. D. C.) (Pet. 9-11). There the court sustained the right of the United States to bring an action for less than $3,000 in the district court because of the special statutory language giving that court cognizance of all actions "in which the United States shall be plaintiffs or complainants." Sec. 11-306 Dist. of Col. Code. Since in this action the United States is neither plaintiff nor complainant,the lack of relevance of this decision and of others like it is clear. *Ridgley* v. *United States*, 45 A. 2d 475 (Mun. Ct. App., D. C.); *Wittek* v. *United States*, 54 A. 2d 747 (Mun. Ct. App., D. C.); cf. *United States* v. *Weisenbloom*, 168 F. 2d 698 (C. A. 2).

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